IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS AMARILLO DIVISION

JIMMY F. McHENRY, PRO SE, TDCJ-CID No. 1811322 Hutchinson County Jail SO No. 12253 Previous TDCJ-CID No. 1060417

Plaintiff.

v.

2:12-CV-0205

MATT ARMSTRONG, Refinishing Systems,

Defendant.

ORDER ADOPTING FINDING OF FACT

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The instant cause was remanded to the United States District Court on May 10, 2013, for a determination of whether plaintiff delivered the notice of appeal in this cause to prison officials for mailing on or before January 10, 2013. On June 21, 2013, the Magistrate Judge, after considering the Amicus Curiae's Amended Response to the Court's Order to Submit Documentation and plaintiff's own failure to respond, made the Finding of Fact that plaintiff did not deliver the Notice of Appeal in this case to prison officials on or before January 10, 2013 and that the evidence shows plaintiff deposited his Notice of Appeal into the internal mail system of the Segovia Unit on or about January 15, 2013.

Plaintiff filed his objections to the Finding of Fact of the Magistrate Judge on July 19, 2013. With his objections, plaintiff submitted an unsworn declaration made under penalty of perjury by which he stated he is not sure what day he mailed the "letter" and has no documentation to show the actual deposit date. By his objections, plaintiff states he has recently been diagnosed with a disorder called Hallucinogen Persisting Perception Disorder and requests appointment of counsel to assist him because his symptoms interfere with his legal work. Plaintiff also requests more time to respond further, with the aid of counsel.

In light of the statements contained in plaintiff's unsworn declaration, that he cannot recall the date of mailing and has no documentation recording that date, there appears to be no

need for appointment of counsel or any further time for response.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Finding of Fact, as well as the objections filed by the plaintiff.

The Court is of the opinion that plaintiff's objections should be OVERRULED and the Finding of Fact of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does hereby ADOPT the Finding of Fact of the United States Magistrate Judge in this case that plaintiff did not deliver the Notice of Appeal in this case to prison officials on or before January 10, 2013 and that the evidence shows plaintiff deposited his Notice of Appeal into the internal mail system of the Segovia Unit on or about January 15, 2013.

The Clerk will transmit a copy of this Order to the United States Court of Appeals for the Fifth Circuit in order to supplement the record on appeal in this cause.

It is SO ORDERED.

Signed this the ______ day of July, 2013.

United States District Judge

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